

57. (original) A milk flow meter adapted to be operatively connected to a milking apparatus withdrawing milk from an animal's teats while applying a controlled vacuum in the range of about 11.5 inches of Hg to about 14.0 inches of Hg to the teats enabling the milk to be withdrawn therefrom at various milk flow rates up to a peak flow rate, said milk flow meter comprising a conduit having side walls and a predetermined minimum internal diameter selected to be in the range of a minimum internal diameter of at least about 0.75 inches for maintaining at the various milk flow rates a substantially uniform flow of milk therethrough and for concurrently providing a stable continuous vacuum in a vacuum channel between the flow of milk and the interior side walls of said conduit and a maximum internal diameter equal to about 1.5 times the minimum internal diameter.

#### ADDITIONAL FEES

No additional fees are deemed due herein. However, if any additional fees are required for any reason, please charge the same to Deposit Account No. 13-2515.

#### REMARKS

##### **Claims**

The parent Patent Application Serial No. 09/782,849 filed February 13, 2001, included Claims 1 through 57. The claims were subject to a restriction requirement as discussed below. In accordance with the restriction requirement and for the reasons

set forth below, claims 1-38 and 46-50 have been canceled. Thus, claims 39-45 and 51-57 are pending in this Divisional Application for continued prosecution.

#### **Restriction Requirement**

In the parent Patent Application Serial No.:09/782,849 filed February 13, 2001, the Examiner imposed a restriction requirement under 35 U.S.C. § 121 and determined that the following distinct inventions were present in parent Application Serial No. 09/782,849. The restriction requirement was as follows:

<u>Group</u>	<u>Claims</u>	<u>Classification</u>
I	1-38, 46-50	Drawn to a device and method for measuring fluid flow rate, classified in Class 73, subclass 861+
II	39-45, 51-57	Drawn to a milking flow meter used in conjunction with a milk claw and system, classified in Class 119, subclass 14.15

In imposing the restriction requirements, the Examiner further stated, in part, as follows:

This Application contains claims directed to the following patentably distinct species of the claimed invention: Species I- Fig. 6, Species II-Fig. 7 and 8; Species III-VIII Figs. 9-19, respectively.

Applicants responded to this restriction requirement as follows:

Since there is no clarifying or language is set forth in the Office Action relating to this statement, Applicant is unclear as to whether the Examiner is now imposing a further restriction requirement as to an elected species.

Applicants are concerned that the above statement may have meant to be a possible further restriction requirement as to an elected species in order to be responsive.

If the Examiner was not imposing a further restriction requirement as to an elected species, then no other action appears to be required on the part of the Applicants.

If the Examiner was imposing a further restriction requirement as to an elected species, Applicants response is as follows.

Subject to the restriction in applications as set forth in the MPEP Section 800 et seq. relating to the imposition of a restriction requirement in an application and Applicants retaining the right that once a

claim that is determined to be generic is allowed such that all of the claims drawn to the species which include the limitations of the generic claim would likewise be allowable in view of the allowance of the generic claim as set forth in MPEP Section 806.04(d) and Applicant retaining the rights after an action following election as set forth in MPEP Section 809.02(c), Applicants hereby conditionally elect the Species I-Fig. 6 for prosecution in this Application.

#### **Withdrawn Invention**

Group II claims, claims 39-45, 51-57, are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Applicants do not desire to cancel the claims drawn to the non-elected invention until an allowable claim or claims have been obtained in this Application.

In the Office Action dated September 11, 2003 in the parent Patent Application Serial No. 09/782,849 filed February 13, 2001, the Examiner made the following statement concerning the imposition of the restriction requirement, to wit:

1. Claims 39-45, and 51-57 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.
2. Claims 3, 10-38, 48 and 50 are further withdrawn as being drawn to a nonelected species as the applicant failed to list the claims readable on the elected figure (Fig. 6).

As a result of the above, the restriction requirement was ultimately finally determined to be as follows:

<u>Group</u>	<u>Claims</u>	<u>Classification</u>
I	1, 2, 4-9, 46, 47 and 49	Drawn to a device and method for measuring fluid flow rate, classified in Class 73, subclass 861+
II	39-45, 51-57	Drawn to a milking flow meter used in conjunction with a milk claw and system, classified in Class 119, subclass 14.15
III	3, 10-38, 48 and 50	Drawn to a device and method for measuring fluid flow rate, classified in Class 73, subclass 861+ as non-elected species based on Applicant failure to list the claims readable on the elected figure (Fig. 6)

As such Group II, claims 39-45 and 51-57, drawn to a milking flow meter, and Group III, claims 3, 10-38, 48 and 50, drawn to a device and method for measuring fluid flow rate, as non-elected species based on Applicant's failure to list the claims readable on the elected figure (Fig. 6) were withdrawn from further consideration by the Examiner under 37 CFR 1.142(b) as being drawn to a non-elected invention and to a non-elected species in the parent Parent Application Serial No.:09/782,849 filed September 13, 2001.

The Group I, claims 1, 2, 4-9, 46, 47 and 49 drawn to a device and method for measuring fluid flow rate were prosecuted in the parent Patent Application Serial No. 09/782,849 filed February 13, 2001.

**This Divisional Application is being filed to prosecute the invention of the Group II, claims 39-45 and 51-57 drawn to a milking flow meter.**

Applicant confirms to the Examiner that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

#### **Drawings**

Enclosed herewith are Nine (9) sheets of formal Drawing which is to be used as the formal Drawing for this Divisional Application.

### **Specification**

A copy of Specification, comprising Pages 1 through 41, Claims 1 through 57 comprising pages 1 through 23, Abstract Of The Disclosure comprising one (1) page, DECLARATION FOR PATENT APPLICATION comprising two (2) pages and nine (9) sheets of Drawing as filed in the parent Patent Application Patent Application Serial No. 09/782,849 filed on February 13, 2001 are enclosed herewith. These documents are not in the new Patent Application format.

### **Submission of Substitute Specification**

In order to facilitate the United States Patent and Trademark Office scanning facility, Applicants have enclosed herewith a substitute Specification comprising Pages 1 through 50, Claims through 57 comprising Pages 1 through 27, and ABSTRACT OF THE DISCLOSURE comprising one (1) Page, all of which are formatted using the new Patent Application Format. The information required under the section captioned CROSS-REFERENCES TO RELATED APPLICATIONS has been completed to reference that this Application is a Division of United States Patent Application Serial No. 09/742,849 filed February 13, 2001. Copies of the DECLARATION FOR PATENT APPLICATION comprising two (2) pages are also enclosed herewith.

No new matter has been added in reformatting the documents.

**Information Disclosure Statement**

An INFORMATION DISCLOSURE STATEMENT is being filed concurrently with the Divisional Application and this PRELIMINARY AMENDMENT.

Respectfully submitted,



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